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HW

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/007,547	11/06/2001	Harry E. Shisler	021756-016110US	5438
51206	7590	12/13/2005	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW LLP TWO EMBARCADERO CENTER 8TH FLOOR SAN FRANCISCO, CA 94111-3834			DINH, DUNG C	
		ART UNIT	PAPER NUMBER	
		2152		
DATE MAILED: 12/13/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/007,547	SHISLER ET AL	
	Examiner Dung Dinh	Art Unit 2153	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 19 September 2005.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 22-28 and 30-45 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 22-28, 30-43 and 45 is/are rejected.
 7) Claim(s) 43 and 44 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>3/24/05</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 9/19/05 have been fully considered but they are not persuasive.

Regarding the obviousness double patent the amended claims 22 and 32 still recite essentially the same subject matter claims in claims 1 + 5 of patent 6,801,926.

Regarding the 103 rejection of claim 22 and 32, Applicant argues that Knotts teaches away from having a database comprising data to be used by the batch application separate from the server storing the template. Applicant argues that Knotts teaches to store the template in the database. The argument is not persuasive because Knotts clearly show the template (32) as separate from the database (28). See fig.2. Furthermore, the section quoted by applicant (col.5 lines 45-47), Knotts merely suggest that the template "can be stored together" with the database. There is nothing in Knotts that requires the template to be stored together as argued by Applicant.

Claim rejection - 112 2nd paragraph

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Claims 42-43 and 45 are rejected under 35 USC 112 second paragraph as failing to set forth the subject matter which applicant regard as their invention.

Claims 42 and 45 are depend upon canceled claims. It is unclear which claims 42 and 45 depend on.

Claim 43 is rejected because it depend upon rejected claim 42.

Claim Rejections - Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 22 and 32 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 6,801,926. Although the conflicting claims are not identical, they are not

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patentably distinct from each other because they recite essentially the same limitations.

Current claims 22: a design tool ...	Patent 6,801,926 claim 1 - col.23 line 35
at least one database subsystem configured to provide access... (to) data to be used by the batch application;	claim 5 - col.23 lines 56-60 ... database middleware adapted to direct access to the database facilities in accordance with the specifications.
a specification server storing the first specification	claim 4 - col.23 line 54
a processing subsystem ...	claim 1 - col.23 line 42 and claim 2 & claim 3
a middleware subsystem ...	claim 1 - col.23 line 45

Current claim 32 is a method reciting the same limitation as claims 22. Hence, it is similarly rejected.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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Claims 22-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knotts et al. US patent 6,065,002 and further in view of Sheffield et al. US patent 5,566,330.

As per claim 22, Knotts teaches a programmable batch processing engine comprising:

at least one database subsystem (fig.2 #28) configured to provide access for the batch application comprising data to be used by the batch application (col.6 lines 10-18).

a specification server subsystem (fig.2 #30) storing first specification (Fig.2 Template #32, col.4 line 68 to col.5 line 4, col.5 lines 15-16) separate from the database subsystem (fig.2 clearly show subsystem 30 as separate from database subsystem 28);

a processing subsystem (fig.2 application tool 26) operable on a computer and configured to execute the batch application based on the first specification (col.5 lines 17-20, col.8 lines 10-40);

a middleware subsystem (Interface 24) providing communication of the first specifications within the processing system (See col.5 line 45 to col.6 lines 17).

Knotts teaches a processing engine essentially as claimed. Knotts is silent on the design tool subsystem to create the first specification (Template 32). However, it is inherent that Knotts would have had a design tool subsystem in order to create the

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template 32. In similar field of invention, Sheffield teaches a design tool subsystem (GUI) to enable a user to creating reusable and modifiable database interface object (i.e. template). (See Sheffield col.1 line 55 to col. 2 line 7). Sheffield teaches that the system permit a user to create the interface without extensive knowledge of database operation nor code database operations in a programming language. (See Sheffield col.7 lines 21-25). Hence, it would have been obvious for one of ordinary skill in the art to combine the teaching of Sheffield with Knotts because it would have enabled a user to provide high level specification to create the template 32 without extensive knowledge of database operation nor code the database operations in a programming language.

As per claim 23, it is apparent that in the system as modified would have adapted Sheffield GUI to take specifications (i.e. first specification) from the user to create Knotts' template 32. Knotts teaches the template is stored on a specification server (see fig.1 #30, and col.15 lines 14-15).

As per claim 24, Knotts teaches a design tool subsystem configure to generate, based on the template, second specifications for the batch application (col.5 line 52 to col.6 line 17, specifically col.6 lines 4-8 and lines 42-50 - the specific attributes/properties selected by the user).

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As per claim 25, Knotts teaches another processing subsystem configured to execute the batch application based on the second specifications (col.5 lines 7-17 - function 34).

As per claim 26, Knotts teaches the batch application comprises a report application (col.5 lines 40-41)

As per claims 27 and 28, Knotts teaches middleware input/output subsystems for the batch application (ODBC API).

As per claims 30-31, Knotts teaches to communicate via the middleware subsystem (Interface 24) to simplify access to database (col.5 lines 44-46). Knotts further teaches storing the template in a database (col.5 lines 14-16). Hence, it is apparent that the first specification (i.e. the template) would be communicated to and from the server subsystem via the middleware subsystem.

As per claims 32-41 they are rejected under similar rationales as for claims 22-31 above.

Allowable Subject Matter

Claims 43 and 44 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dung Dinh whose telephone number is (571) 272-3943. The examiner can normally be reached on Monday-Friday from 7:00 AM - 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess can be reached at (571) 272-3949.

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The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Dung Dinh
Primary Examiner
December 5, 2005